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October 16, 2008

The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: *Northeast Utilities Service Co.*, et al., Docket No. ER08-1548-000,  
Errata to October 14, 2008 Filing

Dear Secretary Bose:

On October 14, 2008, the Maine Public Utilities Commission, the New England Conference of Public Utility Commissioners, the Attorney General of the State of Rhode Island, and the Connecticut Department of Public Utility Control jointly submitted for filing a Motion to Hold Petition in Abeyance and Protest ("Motion") in the above-captioned proceeding. Since making the filing, it has come to our attention that the filing incorrectly identified the name of the Rhode Island Attorney General and failed to identify all of the filing parties in the title. We are therefore submitting the attached Motion to correct the aforementioned errors but are otherwise making no substantive changes to the previously filed Motion. I apologize for any inconvenience.

Respectfully,

/s/ Joshua E. Adrian  
Joshua E. Adrian

*Counsel for the Maine Public Utilities Commission*

cc: Docket No. ER08-1548-000 Service List

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

|                                     |   |                          |
|-------------------------------------|---|--------------------------|
|                                     | ) |                          |
|                                     | ) |                          |
| Northeast Utilities Service Company | ) |                          |
|                                     | ) | Docket No. ER08-1548-000 |
| National Grid, USA                  | ) |                          |
|                                     | ) |                          |

**MOTION TO HOLD PETITION IN ABEYANCE AND PROTEST OF  
THE MAINE PUBLIC UTILITIES COMMISSION, THE NEW ENGLAND  
CONFERENCE OF PUBLIC UTILITY COMMISSIONERS, THE ATTORNEY  
GENERAL OF THE STATE OF RHODE ISLAND, AND THE CONNECTICUT  
DEPARTMENT OF PUBLIC UTILITY CONTROL**

The Maine Public Utilities Commission (“MPUC”); the New England Conference of Public Utility Commissioners (“NECPUC”); Patrick C. Lynch, Attorney General of the State of Rhode Island (“Rhode Island”); and the Connecticut Department of Public Utility Control (“CT DPUC”) (collectively, “New England Regulators”) respectfully file this Motion to Hold Petition in Abeyance and Protest in the above-captioned proceeding regarding the September 17, 2008 Joint Application (“September 17 Application”) filed by Northeast Utilities Service Company (“NU”) and National Grid, USA (“NGrid”) (collectively, “Joint Applicants” or “Applicants”) seeking from the Federal Energy Regulatory Commission (“Commission”) a Declaratory Order Authorizing Incentive Rates for the New England East-West Transmission Project (“NEEWS” or “Project”).

As discussed below, holding the September 17 Application in abeyance until the various state Certificate of Public Convenience and Necessity (“CPCN” or “Certificate of Need”) proceedings are complete will promote administrative efficiency because it will allow the Commission to determine the basis of the Joint Applicants’ claims as they pertain to the Project and as they may evolve through the CPCN procedures.

Alternatively, if the Commission denies the abeyance motion, the New England Regulators respectfully protest granting any incentive treatment. If the Commission grants incentives, it should grant the Applicants' requests only with respect to its request for recovery of prudently incurred abandoned plant costs because this incentive is more than sufficient to offset any investment risks associated with NEEWS. Alternatively, if the Commission grants additional incentives, the only additional incentive that should be granted is Construction Work in Progress ("CWIP"). Because Joint Applicants have failed to show that an ROE adder is needed or that an ROE of 13.14% is reasonable, the request for an ROE adder should be denied.

**I. PRELIMINARY STATEMENT**

This filing is submitted pursuant to Rules 211, 212, and 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. §§ 385.211, 385.212, and 385.214 (2008), and the Commission's October 6, 2008 Order in which the Commission extended the deadline by which interventions and protests must be filed until October 14, 2008.

The persons to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the Commission's official service list are designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2008):

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## **II. BACKGROUND AND DESCRIPTION OF THE PROPOSED PROJECT**

NEEWS is actually four proposed transmission projects: (1) the Greater Springfield Reliability Project (“GSRP”); (2) the Interstate Reliability Project (“Interstate”); (3) the Central Connecticut Reliability Project (“CCRP”); and (4) the Rhode Island Reliability Project (“RIRP”). Joint Application Transmittal Letter

(“Transmittal Letter”) at 9. Each of the individual components have tentative in-service dates of 2012 or 2013. *See id.* at 10-12.

The GSRP consists of a proposal to build 115-kV system that transmits power among substations that serve local load as well as to the 345-kV bulk power supply system by adding a second 345-kV line between Massachusetts and Connecticut. The GSRP has an approximate price tag of \$714 million. *Id.* at 10.

The Interstate component of the NEEWS Project proposes approximately 77 miles of new 345-kV lines as well as improvements to existing 345-kV and 115-kV facilities at an estimated cost of \$457 million. *Id.* at 11.

The CCRP component involves proposals for a new 345-kV transmission line in central Connecticut as well as a new 38 mile long 345-kV line from CL&P’s North Bloomfield Substation to its Frost Bridge Substation in Watertown. This proposal also calls for many improvements to existing 345-kV and 115-kV facilities including the installation of a second 345/115-kV autotransformer between Massachusetts and Connecticut. The anticipated cost of the CCRP is \$313 million. *Id.* at 11-12.

The RIRP, which is to be constructed by NGrid, is a proposed upgrade on an existing right-of-way running North-South from North Smithfield, Rhode Island to Warwick, Rhode Island, which includes an additional 345-kV line between the West Farnum (North Smithfield) and Kent County (Warwick) substations as well as the installation of an additional 345/115-kV autotransformer at an existing substation. *Id.* at 12. RIRP would also involve a significant amount of “reconductoring” of various segments of 115-kV lines and terminal equipment upgrades. *Id.* Joint Applicants

anticipate that these additional transmission lines and other upgrades will total \$285 million. *Id.*

The RIRP portion of the NEEWS project also consists of additional upgrades that NGrid asserts must be constructed and placed in service in advance of other updates in RIRP in order to avoid overloads of the existing transmission network and to allow for system outages when the major RIRP upgrades are constructed. *Id.* These upgrades, which National Grid refers to as “Advanced NEEWS” upgrades, include installation of an additional Kent County 345/115-kV auto transformer; two 115-kV, 72-MVAR capacitors and other upgrades to the Kent County Substation; and a new 345/115-kV Plainville Substation, as well as the upgrade of 115-kV lines and substation equipment. *Id.* These “Advanced” upgrades are projected to cost approximately \$143 million in total.

Joint Applicants each seek rate incentive adders of 150 basis points to their base Return on Equity (“ROE”), 100 percent of prudently incurred costs in the event that the Project is abandoned, as well as inclusion of Construction Work in Progress (“CWIP”) as a means of recovering the Project’s costs through gradual inclusion in their rate structure. Joint Applicants assert this rate treatment would be necessary to offset the financial risks associated with the Project and to attract needed investments.

Currently the NEEWS project has been through the regional planning process with ISO-New England (“ISO-NE”). However, the Project and its various components have not been through the various states’ siting procedures, and the Joint Applicants have not yet received Certificates of Need from these state authorities. In fact, only the RIRP had been submitted for siting approval when the Joint Filing was made. *See infra*, n.2.

Currently, the cost of the project is estimated at \$2.1 billion. However, the Joint Applicants note that this cost estimate was prepared for planning purposes and is expected to be “refined” as the NEEWS upgrades “move through the permitting and construction process.”<sup>1</sup>

### **III. MOTION TO HOLD CASE IN ABEYANCE**

Joining other transmission owners in the rush for “free” money which the Commission has been handing to Transmission Owners at the expense of ratepayers, NU and NGrid are asking the Commission to adjudicate their request for a 150 basis point ROE adder and CWIP before they have even filed all of their siting applications.<sup>2</sup> The New England Regulators respectfully ask that the Applicants’ September 17 Joint Application be held in abeyance pending the completion of the numerous state siting proceedings. Holding the September 17 Joint Application in abeyance will allow the Commission to determine the merits of the application made based on the specifics of any project that may be approved in the various states’ Certificate of Need proceedings. If and when the Project and its various components have received Certificates of Need, the Commission will have the actual project parameters before it. Granting the motion will allow the various state authorities to determine the merits of the proposed project.

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<sup>1</sup> Prepared Joint Direct Testimony of David H. Boguslawski of Northeast Utilities Service Company and Paul Renaud of National Grid USA (“Boguslawski and Renaud Testimony”) n. 13. If history is a guide, by the time the project is complete the cost may be closer to \$4 billion.

<sup>2</sup> NU plans to file for siting approval for the GSRP with the Connecticut Siting Council (“CSC”) in September 2008 and the Massachusetts Energy Facilities Siting Board (“EFSB”) in October 2008. With regard to the Interstate component of the Project, NU plans to file for siting approval with the CSC in December 2008 while NGrid only plans to apply for siting approval with the Massachusetts EFSB and Rhode Island EFSB in early 2009. Connecticut Light and Power plans to file for siting approval with the CSC for the CCRP in June 2009 and initiate the formal municipal consultation process for the CCRP in March or April 2009. National Grid filed for siting approval for the RIRP from the RI EFSB on September 8, 2008. See Direct Testimony of David Boguslawski and Paul Renaud at 54-56.

Holding the September 17 Application in abeyance is consistent with the Commission's statements in Order Nos. 679 and 679-A<sup>3</sup> in which the Commission expressed its intent to coordinate its consideration of incentives with these state siting authorities. For example, in Order No. 679, the Commission stated:

With regard to state review, the Commission recognizes that incentives for many utilities are incorporated into rates that must receive state commission approval and that many decisions on siting and permitting of new facilities are under the jurisdiction of state and local government authorities. Because of this, we will carefully consider the views of any state bodies having jurisdiction over these matters. We also will, as discussed below, adopt a rebuttable presumption that projects approved by an appropriate state commission or siting authority are eligible for incentives under section 219. We believe that, in these ways, we will appropriately coordinate our consideration of incentives with the views of responsible state agencies.

Order No. 679 at P 54. On rehearing, the Commission stated, "The Commission created the rebuttable presumption because we do not wish to duplicate the work of state siting authorities, regional planning processes, or the U.S. Department of Energy (DOE) under EPC Act section 1221." Order 679-A at P 5. If the Commission makes determinations about the project before the state siting authorities even determine what the project, if approved, will ultimately look like, the Commission will not have the benefit of the various state siting authorities' extensive review of the specifics of the project. Moreover, premature consideration of the incentive request based on a different project than that approved by the state siting authority will likely require the Commission to revisit its original decision. This administrative inefficiency could be avoided by simply deferring consideration of Joint Applicants' request for incentive rate treatment for the

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<sup>3</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).



NEEWS Project until after the Certificate of Need proceedings have been completed. For all of these reasons, the New England Regulators requests that the September 17 Joint Application be held in abeyance until the conclusion of each Certificate of Need proceeding.

Finally, the Commission should not encourage the transmission owners' "gold rush" at the expense of consumers, especially in view of the current financial crisis. Holding this application in abeyance will allow a deliberate approach to the requests once all the facts are in place and the financial situation has stabilized.

#### **IV. STANDARD FOR GRANTING INCENTIVES**

The Energy Policy Act of 2005 ("EPAct 2005") added Section 219 to the Federal Power Act. Section 219 required the Commission to develop rules for incentive-based rate treatment for transmission that ensures reliability and reduces congestion. Section 219 required that the rules:

- “(1) promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce, regardless of the ownership of the facilities;
- “(2) provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies);
- “(3) encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities; and
- “(4) allow recovery of— (A) all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 215; and

“(B) all prudently incurred costs related to transmission infrastructure development pursuant to section 216.

Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594, 961 (to be codified at 16 U.S.C. § 824S) (adding section 219 to the Federal Power Act). Section 219 further requires that all rates approved under the rules “are subject to the requirements of section 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory of preferential.” *Id.*

In Order Nos. 679 and 679-A, the Commission set forth rules to implement Section 219. The Commission’s rules establish a rebuttable presumption that the project ensures reliability or reduces congestion if it has resulted from a regional planning process or has been approved through a state siting process. Order No. 679 at P 58. Once a project meets this test of “ensuring reliability” or “reducing congestion,” there is an additional standard to determine whether incentives are appropriate. This standard, referred to as the “nexus” test, is designed to “ensure that incentives are not provided in circumstances where they do not materially affect investment decisions.” Order No. 679-A at P 25. While the test originally required only that an applicant show that there is a “nexus” between each individual incentive being sought and the investment being made, rather than to the package of incentives as a whole, on rehearing, the Commission clarified that the nexus test would be more robust and would be met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project.” *Id.* at P 6.

Further, on clarification, the Commission sought to assure commenters that it would not routinely grant adders at the highest end of the zone of reasonableness. Thus, it clarified that it did “not intend to grant incentive returns ‘routinely’ or that, when granted, *they will always be at the ‘top’ of the zone of reasonableness.* Rather, each applicant will, first, be required to justify a higher ROE under the required nexus test and, second, to justify *where in the zone of reasonableness that return should lie.*” *Id.* at P 7 (emphasis added). The Commission further revised the rule to require that “applicants must provide sufficient explanation and support to allow the Commission to evaluate each element of the package and the *interrelationship* of all elements of the package. If some of the incentives would reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE.” *Id.* at P 27 (emphasis added).

Finally, the Commission addressed the concern raised by the California Public Utilities Commission that Order No. 679 did not take into consideration the relatively low risk associated with transmission investment. The Commission stated that it agreed with the California Commission “that utilities should consider the effect that certain incentives (e.g., CWIP in rate base, recovery of abandoned plant) may have on risk and that *return on equity in the upper end of the zone of reasonableness may not be appropriate when combined with incentive rate treatments that lower overall risk.*” *Id.* at P 65 (emphasis added).

## **V. PROTEST**

### **A. NU and NGrid Have Failed to Demonstrate that the Requested Adder Is Within the Range of Reasonableness**

Order No. 679 allows entities to either file a request for a declaratory order that the requested adder is within the range of reasonableness and the project is therefore

entitled to incentive rate treatment or to file a Section 205 rate proceeding actually establishing the ROE for the project. If the petitioners choose to seek a declaratory order, petitioners are then required to file a section 205 filing to determine that the adder is within the range of reasonableness. Joint Applicants have chosen the latter alternative. Thus they are required to make a showing that the application of the incentive ROE adder does not exceed the range of reasonableness. Order No. 679-A at PP 69-70. However, the evidence Joint Applicants have provided does not establish that the requested ROE adder is within the range of reasonableness or that the range of reasonableness established in Docket No. ER04-157, which is based on outdated data, is applicable here. Joint Applicants both seek a 150 basis point adder to further enhance the ROE established in Docket No. ER04-157. The ROE established in Docket No. ER04-157 is comprised of a 10.4% base ROE (midpoint of the range of reasonableness in that case), a 50 basis point adder for RTO membership and a 74 basis point adjustment to reflect market changes to arrive at a base ROE of 11.64%. Adding 150 basis points to 11.64% results in an ROE of 13.14%. According to the Joint Applicants, the 13.14 % ROE is justified because it is below the upper end of the range of reasonableness of 13.5% established in Docket No. ER04-157. Transmittal Letter at 29. Joint Applicants provide a Discounted Cash Flow analysis sponsored by Dr. William Avera, “using current financial conditions,” for the purpose of showing “the continued reasonableness of the existing zone [of reasonableness]” and “not to determine a new just and reasonable rate.” Transmittal Letter at 30.

Dr. Avera’s testimony does not establish “the continued reasonableness” of a zone with a high end of 13.5% or a midpoint of 10.4%. Instead, based on the corrections

made in the attached affidavit prepared by MPUC Analyst Richard S. Kivela, the base ROE should be reduced to 10.05%, which is the midpoint of a reasonable range of 8.3% to 12.8%. Kivela Affidavit at ¶ 48. Thus the requested ROE of 13.14% exceeds the top end of the zone of reasonableness, as corrected. Conversely, if a 150 basis point adder (which, as discussed below, is not justified) were added to an ROE of 10.55% (10.05 midpoint plus a 50 basis point RTO joining adder) the total ROE would be 12.05% rather than 13.14. That said, New England Regulators request that the ROE determination be set for hearing consistent with established FERC precedent. *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (“PATH”) (dissent of Commissioner Kelly) at 1-2 (asserting that the ROE determination should have been set for evidentiary hearing and emphasizing the need for parties to have an opportunity for cross-examination, rebuttal, and oral argument prior to a Commission determination on a request for an ROE).

In the Joint Application, NU and NGrid use a cross sample of several companies referred to as the “RTO Proxy Group” in order to establish a potential range of reasonableness for the cost of equity for their investment in the NEEWS project. Importantly, NGrid’s and NU’s reliance on various members of this peer group produces upward bias that unnecessarily inflates the ROE range. As the Kivela Affidavit explains, a threshold flaw in the baseline ROE proposal is that the proxy group used by the Joint Applicants’ witness, William E. Avera, is not representative of the risks of electric transmission companies in the northeast.

Many of the companies used by Dr. Avera in his “RTO Proxy Group” are involved in diversified lines of business beyond electric transmission, such as electric

generation and/or international operations. Kivela Affidavit at ¶ 39. Dominion Resources, Exelon, FirstEnergy, FPL Group, and Constellation, for instance, all have significant generation businesses (merchant as well as base-load), including investments in nuclear generation. *Id.* Dr. Avera's Proxy Group also consisted of transmission-owning members of ISO-NE, New York Independent System Operator ("NYISO"), and PJM Interconnection, L.L.C. ("PJM") that have publicly-traded stock while excluding otherwise qualifying companies that do not pay common dividends. *Id.* at ¶ 35. Dr. Avera's choice of members within the proxy group creates an upward bias of the appropriate range for an ROE. *Id.* at ¶¶ 31-36. A reasonable ROE for transmission operations must be based on a more representative proxy group, or at a minimum, the Commission must recognize the significant risk differentials that exist between Dr. Avera's proxy companies and the Transmission Owners by setting the ROE at the lower end of the proxy group range of returns. *Id.*

Even if Dr. Avera's proxy group were based on comparable utilities, the results generated are inaccurate for a second reason. Dr. Avera's calculation of an estimated average cost of equity for the S&P500, a proxy for the equity market as a whole, determined that an average expected ROE for these firms was 13.0%. *See* Testimony of William Avera at 60. Based on these calculations, the appropriate benchmark for gauging whether an individual DCF result for companies in Dr. Avera's RTO Proxy Group is inappropriately high is the 13.0% ROE estimate. *See* Kivela Affidavit at ¶¶ 12, 45. As seen in Exhibit NU/NG-603, Dr. Avera did not remove all of the entities that yielded greater ROEs than the upward range of 13.0%. *Id.* at ¶¶ 42-43. Dr. Avera excluded only the lowest result from his RTO Proxy Group DCF analysis of UIL

Holdings (7.4%) as well as three extremely high-end ROE outliers which included Allegheny Energy at (23.2%), Constellation Energy Group at (18.4%), and PPL at (19.9%). After removing additional outlying entities, the adjusted range of reasonableness is not 8.3% to 15.7%, as stated by Dr. Avera, but rather is 8.3% to 12.8%. *See Kivela Affidavit at ¶¶ 47-48.*

**1. Even if NGrid and NU had established sufficient facts to warrant a base ROE of 10.4% under Order No. 489, the additional 74 basis points granted in Order No. 489 to reflect changed conditions is no longer justified**

Even if a base ROE of 10.4 % (rather than the 10.05 % established in the Kivela Affidavit) were reasonable, the evidence provided by the Joint Applicants fails to account for the effects of recent equity market conditions and updated bond market data on the Applicants' requested ROE. An analysis of these changes, as provided in more detail in the Kivela Affidavit, shows that an enhanced ROE in the range of 13.14% is unnecessarily inflated even beyond the unwarranted requested 150 basis point adder due to falling bond yields, as well as lower expectation for ROE in the common equity markets as a whole since the issuance of Opinion No. 489. In fact, the change in market conditions since the Commission's Opinion No. 489 renders the requests by NU and NGrid for an incentive-enhanced ROE of 13.14% the equivalent of requesting an incentive adder between 260 and 274 basis points. *Kivela Affidavit at ¶¶ 8-15.*

The capital market conditions that caused the Commission to add 74 basis points to the "base" ROE have more than reversed themselves since the issuance of Order No. 489 in August 2006. *Kivela Affidavit at ¶ 10.* In fact, for the 6-month period from April 2008 through September 2008, the average monthly yield on 10-Year U.S. Treasury Bonds was 3.88% (3.9% rounded). *Id.* at ¶ 11 and Exhibit A attached thereto (Federal

Reserve Statistical Release for months of April through September 2008). Using the Commission's preferred methodology for updating ROE suggests that a downward adjustment of 110 basis points (5.0% minus 3.9%) to the base ROE approved on Rehearing would be appropriate at this time. In addition, Dr. Avera's recent evaluation of the required ROE on the S&P500, currently 13.0%, has fallen by an even greater amount since he conducted the same analysis in Docket No. ER04-157. At that time, Dr. Avera found the expected ROE on the S&P500 to be 14.24%. Today, the expected ROE on the S&P500 (a proxy for the common equity market as a whole) has fallen by 124 basis points to date. Kivela Affidavit at ¶ 12. Thus, the Commission should revise the range of reasonableness after a hearing and a meaningful opportunity to be heard.<sup>4</sup> However, if the Commission refuses to set the matter for hearing, it should at the very least revise the range of reasonableness as discussed in the Kivela Affidavit or consider the requested adder subsumed by the changed conditions and thus no longer necessary.

Moreover, the Commission has determined that, even when a base ROE is established in a settlement, hearing procedures would be established to determine the utility's "overall range of reasonableness" and a "determination of where, within that range, its base level ROE should be set." *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 57 (2007). Here, either the adjustment to reflect current bond yields should be made to

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<sup>4</sup> Providing intervenors 27 days to develop testimony countering the hundreds of pages of testimony compiled by Joint Applicants did not provide New England Regulators a meaningful opportunity to respond to Joint Applicants filing. *See, e.g.*, PATH, 122 FERC ¶ 61,188 Kelly Dissent (expressing concern that "[c]onsistently determining ROEs in the absence of evidentiary hearings will require interested parties, some of which rely on outside expertise in order to participate, to meaningfully respond in 21 days...which would "most probably deny the Commission a full and robust record on which to base its determination and ... undermine the confidence of transmission users that [FERC] is setting incentive ROEs with the care and consideration that they deserve").



reflect current conditions or the New England transmission owners' ROE should be set for hearing in order to determine that the ultimate rate is just and reasonable.

**B. Joint Applicants Have Not Established the Required Nexus**

**1. Joint Applicants Have Not Established That ROE Adders Are Appropriate**

The “nexus” test is designed to “ensure that incentives are not provided in circumstances where they do not materially affect investment decisions.” Order No. 679-A at P 25. The Petition is replete with conjecture about possible dire effects of “turmoil” in the credit market and possible investor concern over the amount of investment in the Project; however, there is no evidence that the requested incentives would materially affect the Joint Applicants' investment decisions because, as discussed below, the Joint Applicants are already obligated to build the project.

In Order No. 679-A, the Commission stated that petitioners requesting incentive rates must demonstrate that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project.” Order No. 679 at P 21. Second, the Commission required petitioners “to justify *where in the zone of reasonableness that return should lie.*” *Id.* at P 67. The Commission stated that it would not routinely grant incentives at the upper end of the range of reasonableness. *Id.* NU and NGrid have failed to show that its base ROE (adjusted for the bond yield adder), with the RTO adder that brings their ROE up to 11.64%, is not sufficiently high to address the perceived risks of this Project.

In fact, the Kivela Affidavit makes clear that investors will likely view the Joint Applicants' ROE as significantly above the return that would be required by the financial community.

## **2. Incentives Are Not Appropriate When Utilities Have an Obligation to Build**

The purpose of the new Section 219 as explained by the Commission is to “attract new investment,” which the Commission explains was not generally occurring in the country. Incentives under this provision were designed to encourage investment in large transmission projects in which a utility has no obligation to build:

New transmission is needed to connect new generation sources and to reduce congestion. However, because there is a competitive market for new generation facilities, these new generation resources may be constructed anywhere in a region that is economic with respect to fuel sources or other siting considerations (e.g., proximity to wind currents), not simply on a "local" basis within each utility's service territory. To integrate this new generation into the regional power grid, new regional high voltage transmission facilities will often be necessary and, importantly, *no single utility will be "obligated" to build such facilities*. Indeed, many of these projects may be too large for a single load serving entity to finance. Thus, for the Nation to be able to integrate the next generation of resources, we must encourage investors to take the risks associated with constructing large new transmission projects that can integrate new generation and otherwise reduce congestion and increase reliability.

Order No. 679 at P 25 (emphasis added). In contrast to the situation described by the Commission as one warranting incentives, in New England, transmission owners such as NU and NGrid have voluntarily assumed an obligation to build new transmission included in the RSP subject to approval by the relevant state siting authorities. The TOA provides:

Subject to the requirements of applicable law, government regulations and approvals, including requirements to obtain any necessary federal, state or local siting, construction and operating permits; the availability of required financing; the ability to acquire necessary rights-of-way; and satisfaction of the other conditions set forth in this Section 1.1, each

PTO shall have the obligation to own and construct (or cause to be constructed) any New Transmission Facility or Transmission Upgrade that is designated in the ISO System Plan as necessary and appropriate for system reliability or economic efficiency. The PTO may enter into appropriate contracts to fulfill any obligations associated with the ownership and construction of such New Transmission Facilities or Transmission Upgrades.

TOA at Schedule 3.09(a), Section 1.1(a). The TOA further provides that this obligation is subject to the utilities' right to earn a return on and of prudently incurred costs. As discussed below and recognized by the Joint Applicants, the TOA also gives them the right to recover all prudently incurred abandoned plant costs. *See* TOA Schedule 3.09. Because NU and NGrid are obligated to build a project within or connected to its electric system, subject to obtaining the necessary siting approvals, the requested incentives "do not materially affect" (*See* Order No. 679 at P 25) their investment decisions. The Applicants will invest in their portions of the Project, assuming they are approved by the state siting authorities because they have an obligation to do so.<sup>5</sup> As discussed below, their obligation to invest comes with very minimal risk due to their ability to recover investments through a formula rate coupled with their ability to recover prudently incurred abandoned plant costs and the more-than-generous base ROE and adds the Commission has already granted in Opinion No. 489.

### **3. Incentives Are Not Appropriate Where A Formula Rate Minimizes Risk**

Both Applicants operate under a formula rate. As the Commission has noted, companies with formula rates face materially less risk than those with stated rates. *See*,

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<sup>5</sup> *See Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) at Dissenting Statement of Commissioner Kelly (stating that, where the utility had a regulatory obligation to undertake a project, the grant of incentives was inappropriate by remarking that "[I]t is a bedrock principle that incentives are meant to encourage behavior that is in the public interest but that is not otherwise required").

*e.g., Ne. Utils. Serv. Co.*, 56 FERC ¶ 61,269 at p. 62,053 (1991); *Ind. & Mich. Power Co.*, 4 FERC ¶ 61,316 at p. 61,739 (1978); *S.C. Generating Co.*, 40 FERC ¶ 61,116 at p. 61,311 (1978). A formula rate significantly curtails regulatory risk. Costs can be recovered quickly and with a minimal expenditure of resources. Kivela Affidavit at ¶¶ 47-48. In Order No. 679-A, the Commission noted that the reason routine investments may not qualify for incentive treatment is the “high assurance of cost recovery.” Order No. 679-A at P 51. Where formula rates assure timely recovery of costs, incentive treatment is neither needed nor justified.<sup>6</sup>

**C. Joint Applicant’s Requested Construction Work In Progress Incentive, If Granted, Would Make Any ROE Adders Unnecessary and Therefore Unjust and Unreasonable**

Both NU and NGrid have requested that the Commission affirm their entitlement to 100% of CWIP on the basis that including CWIP in rate base will allow the companies to offset financial risks during the construction period and ensure revenue recovery. *See* Testimony of George J. Eckenroth (on behalf of NU) at 21-22, Testimony of David Bonar (on behalf of NGrid) at 13-15.

As stated above, incentives to encourage construction of transmission are not appropriate here because not only are both NU and NGrid *already obligated* to build, their formula rate already minimizes regulatory risk. However, if the Commission determines that incentives are appropriate, the CWIP incentive should be more than sufficient to mitigate any risk that may be posed by NEEWS. As illustrated by the Kivela Affidavit as well as the very exhibits submitted by NU and NGrid, granting the CWIP

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<sup>6</sup> *Cf. Nevada Hydro Co., Inc.*, 122 FERC ¶ 61,272 at P 34 (2008) (noting that, when a petitioner is “shouldering all risks associated with permitting, financing and constructing” the project, the petitioner has demonstrated that the “project faces substantial economic uncertainty and regulatory risk”).

incentive *by itself* would permit the Joint Applicants to maintain solid investment grade bond ratings of BBB- or better from S&P and Fitch and Baa3 or better from Moody's. Because CWIP will allow the Joint Applicants to retain their current investment grade bond rating, granting an adder in addition to CWIP extracts money from ratepayers without any justification for doing so other than giving utilities "creamy" returns. *Farmers Union Cent. Exch. v. FERC*, 734 F.2d 1486 (D.C. Cir. 1984). Further, unlike several cases in which ROE adders have been granted, neither NU's bond rating nor NGrid's bond rating have been recently downgraded. *See United Illuminating Co.*, 119 FERC ¶ 61,182 at P 64 (2007). Nor have credit rating agencies described the Applicants' outlook as "negative." *See PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068 at P 6 (2008).<sup>7</sup> In fact, virtually all of the reports offered by the Applicants illustrate that the Applicants' investment potential is similar to many other transmission and distribution operations; they offer low business risks and provide a stable source of cash flow to the consolidated entity. *See Kivela Affidavit* at ¶¶ 22-24. For these reasons, the Joint Applicants' conjectures about the possible effect of the NEEWS project on their credit ratings are wholly unsupported and cannot form the basis for the incentive adders,<sup>8</sup> nor have they demonstrated why any additional incentive is justified.

In addition to their request for the inclusion of 100 percent of CWIP in rate base and a greatly enhanced ROE, Joint Applicants request that the Commission affirm in

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<sup>7</sup> *See also Westar Energy Inc.*, 122 FERC ¶ 61,268 at P 47 (2008) (finding that petitioner's BBB- credit rating was "not significantly above a non-investment grade rating" and that "its financial position could be stressed as it takes on a large amount of additional debt to support" the project); *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 12 (2007) (noting that Duquesne's credit rating for senior debt was BBB, which is below the average for electric utilities).

<sup>8</sup> The Commission may not base its decision on speculation of what could potentially occur. It must base its decision on actual facts. *See Nat'l Fuel Gas Supply v. FERC*, 468 F.3d 831, 843 (D.C. Cir. 2006).

advance that prudently incurred costs would be eligible for recovery if the Project were ultimately cancelled or abandoned due to events beyond their control. In this case, recovery of prudently incurred costs on abandoned construction coupled with the inclusion of 100 percent of CWIP in rate base should insulate NU, NGrid, their subsidiaries, lenders, and equity investors from the investment risks associated with the Project. Kivela Affidavit at ¶¶ 53-59.

**D. Joint Applicants' Claims of the Need for Incentives Are Based on Mere Speculation**

Although the Project requires substantial up-front outlays of cash, the Joint Applicants have failed to provide any evidence that inclusion of 100 percent of CWIP in rate base (if this incentive is granted) coupled with recovery of costs of abandoned plant as well as recovery of the Project's costs through formula rates would not be more than sufficient to offset the Project's costs and attract new investment. The Joint Applicants' proffered testimony of George Eckenroth and David Bonar to support of the request for an enhanced ROE is entirely unconvincing. Importantly, the concerns raised by these witnesses are entirely speculative, and NU and NGrid have offered no actual evidence of why an incentive enhanced level of ROE is needed. For example, NU's witness, Mr. Eckenroth, when asked whether an incentive enhanced ROE would be needed if NU's subsidiary companies CL& P and WMECO received 100 percent CWIP, admitted that CWIP would alleviate their cash flow difficulties during the construction period. Testimony of George Eckenroth at 23. Mr. Eckenroth only speculates that an enhanced ROE is needed but does not provide any evidence of what specific factors support an incentive enhanced ROE in the case of NU. Mr. Eckenroth neglects the fact that both NGrid and NU (and its subsidiaries) have investment grade bond ratings (defined as

BBB- or better from Standard & Poor's ("S&P") and Fitch or Baa3 or better from Moody's) and that they are more than capable of attracting adequate investment capital. Kivela Affidavit at ¶¶ 21-26. Furthermore, as the Joint Applicants' own exhibits demonstrate, traditional "pipes & wires" (transmission and distribution) utilities such as NU and NGrid are considered to be at the least risky end of the electric utility spectrum by the investment community. *See* Exhibit No. NU/NG-206 (Eckenroth Direct Testimony) and Exhibit No. NU/NG-301A & -301B (Bonar Direct Testimony).<sup>9</sup>

For all of these reasons, neither NGrid nor NU has proffered any evidence to support their assertion that the current base level ROE, or even a lower figure, when coupled with 100% inclusion of CWIP in rate base (if this incentive is granted), recovery of cost of abandoned plant, and recovery of the Project's costs through an annually adjusted formula rate mechanism are not more than sufficient to attract new investment needed to fund the Project costs.

**E. The Cost of the Requested ROE Adders Is Significant and Would, If Granted, Impose Excessive Rates on Consumers**

Joint Applicants each seek rate incentive adders of 150 basis points to their base ROE, 100 percent of prudently incurred costs in the event that the Project is abandoned, as well as inclusion of CWIP as a means of recovering the Project's costs through gradual inclusion in their rate structure.

The Commission has previously adopted a base ROE of 10.4% for the transmission owners within ISO-NE.<sup>10</sup> In Opinion No. 489, the Commission found that

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<sup>9</sup> *See also* Testimony of David Bonar at 15 speculating that CWIP would relieve cash flow concerns during construction but not in the "medium term" when a ratings down grade might still be possible (but ignoring the fact that rate recovery would continue after construction).

<sup>10</sup> *See Bangor Hydro-Elec., Co.*, 122 FERC ¶ 61,265 at P 22 (2008) ("Order on Rehearing").

three adders should be made to the base ROE. These adders included the following: (1) 50 basis points for RTO participation; (2) 100 basis points for new transmission investment placed in service by December 21, 2008; and (3) 74 basis points for “updated bond market data . . .”<sup>11</sup>

In the present case, the requested adders would raise the Joint Applicant’s ROE from 11.64% to 13.14% (11.64% + 1.50%) for the Project’s costs. The requested ROE adder would impose significant and (as discussed above) unjustified costs on ratepayers. As discussed in the Kivela Affidavit, the cost of the project with the requested 150 basis point adder, assuming that the Project’s costs do not increase once the planning is complete and that there are no cost overruns, is between \$6.4 and \$6.7 billion. Kivela Affidavit at ¶ 17. Even without an adder, the total Project cost is between \$6.0 billion and \$6.3 billion. *Id.* Therefore, the incremental cost to ratepayers of the 150 basis point adder alone is between \$370 and \$400 million over an estimated 30 year lifetime of the Project.<sup>12</sup> *Id.* Given the decreases in the both the yield on the 10-Year Treasury Bond as well as the decreased expectations for the ROE on the S&P 500, the actual adder being requested by the Petitioners is, in actuality, far greater than 150 basis points. *See* Kivela Affidavit at ¶¶ 11-12. It is actually more in the area of 260 to 274 basis points. *Id.* at ¶ 15. At the 260 to 274 basis point levels, the true incentive cost to New England ratepayers over a 30-year project lifetime is between \$700 and \$800 million. *Id.* at ¶ 18.

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<sup>11</sup> *See Bangor Hydro-Elec. Co.*, 117 FERC ¶ 61,129 at P 2 (2006) (“Opinion No. 489”); *see also* Order on Rehearing at P 51.

<sup>12</sup> This calculation assumes a five-year construction for the NEEWS Project based on the proposed in-service dates of 2012 and 2013 for each of its components; a 25 year depreciable lifetime of the project; financing 50% debt (at a 7.0% interest rate); and 50% common equity. *See* Kivela Affidavit at ¶ 13.



These rate increases would also be loaded on top of recent extraordinary increases in the transmission rate due to major new projects, cost overruns on those projects, and the high ROE already granted to the transmission owners, including adders and adjustments made in Docket No. ER04-157. For example, the formula rate filing for the New England transmission owners shows a dramatic increase between 2007 and 2008 rates, from 27.90 per kW year to 44.10 per kW year. *See* Exhibit B Attached to Kivela Affidavit, Presentation at July 22, 2008 NEPOOL Transmission Committee Meeting. With the increases in transmission costs due to major new projects, a pattern of significant cost overruns, and the Commission's ubiquitous and generous grant of ROE adders in recent years, transmission is becoming an increasingly large component of the overall electricity rate. Currently, it is close to 10% of the all-in rate for Maine residential consumers and 20% to 24% of total delivery-only Maine rates. Kivela Affidavit at ¶ 19. The size of the transmission component compared to other rate components will continue to grow at a rapid pace based on projections for transmission investments (*see* Exhibit B attached to Kivela Affidavit) as well as the Commission's decisions in prior cases to grant ROE adders. *See* Kivela Affidavit at ¶ 20, n.7.

**F. Joint Applicants Have Failed to Demonstrate That an ROE Adder Should Be at or Near the High End of the Range of Reasonableness**

Joint Applicants have failed to show either that an ROE adder in the instant case is warranted or that an adder that brings the ROE for NEWWS to 13.14%, which is above the updated high end of the zone of reasonableness as revised by Mr. Kivela,<sup>13</sup> is justified. In Order No. 679-A, the Commission made clear that incentive rate applicants

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<sup>13</sup> As discussed in the Kivela Affidavit and below, the top-end of the overall range of reasonableness is no higher than 12.80%. *See* Kivela Affidavit at ¶¶ 47-48.

would not automatically be granted an ROE at the high end of the range of reasonableness if they made a showing that incentive rate treatment is appropriate. Rather, the Commission made clear that a utility requesting an ROE adder is “required to justify a higher ROE under the required nexus test and, second, to justify *where in the zone of reasonableness that return should lie.*” *Id.* at P 7 (emphasis added). Here, Joint Applicants have failed to show that an enhanced adder is justified, especially in light of their formula rates.

Joint Applicants have also failed to justify an adder of the magnitude requested here. They have not accounted for the risk reduction provided by formula rate recovery. Further, to the extent that recovery of either prudently incurred abandoned plant costs and/or CWIP is granted, this will further reduce financing risks. Joint Applicants have thus failed to demonstrate that its requested adder (or any adder) is tailored to address the purported risks of the Project. Moreover, granting an adder that results in an ROE of 13.14% for the NEEWS Project, which is above the corrected, updated range of reasonableness (the top of which is 12.80%), would not “balance[] the interests of shareholders and consumers” nor would it protect consumers from excessive rates. *See* Opinion No. 489 at Dissenting Statement of Commissioner Wellinghoff. *See also* Kivela Affidavit at ¶¶ 47-48.

**G. Joint Applicants Have Failed to Take into Account That an Upfront Grant of an Adder Serves to Reduce the Size of the Adder Needed**

The Commission has stated that “[a]n applicant seeking such an up-front ROE determination also may request an ROE at the upper end of the zone of reasonableness; however, the fact that an up-front ROE determination is itself an incentive that tends to reduce risk will be taken into account in considering any such request.” Order No. 679-A

at P 70. Thus, while the New England Regulators believe that no adder is appropriate based on the above discussion, if an adder is granted it should be reduced not only by the factors discussed above but by the granting of an adder up-front rather than at the end of the project, which is itself an incentive.

## **VI. CONCLUSION**

For the reasons stated above, the New England Regulators respectfully request that the Commission grant its motion to hold the Joint Applicants' September 17 Application in abeyance until appropriate state authorities act on the Applicants' requests for Certificates for Public Convenience and Necessity. Alternatively, New England Regulators protest the granting of incentives for NEEWS for the reasons more fully discussed herein.

Dated in Augusta, Maine, this 16th day of October, 2008.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 16th day of October, 2008.

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